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DA-96-881

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 96-124
Table of Allotments,) RM-8813
FM Broadcast Stations.)
(Winner and Wessington Springs,)
South Dakota))

NOTICE OF PROPOSED RULE MAKING

Adopted: May 24, 1996 ; Released: June 7, 1996

Comment Date: July 29, 1996

Reply Comment Date: August 13, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Midwest Radio Corporation ("petitioner"), permittee of Station KGGK(FM), Channel 253C1, Winner, South Dakota, proposing the substitution of Channel 252C1 for Channel 253C1 at Winner, the reallocation of Channel 252C1 from Winner to Wessington Springs, South Dakota, and the modification of Station KGGK(FM)'s construction permit accordingly. Petitioner states its intention to apply for Channel 252C1, if reallocated to Wessington Springs.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Wessington Springs is an incorporated community with its own local government consisting of an elected mayor and city council. Wessington Springs has a population of 1,093 persons¹ and is located on State Route 34 in Jerrauld County (population 2,425). It has its own post office and zip code. Petitioner notes that Wessington Springs has its own public school system, public library, fire department, hospital, medical clinic, nursing home, churches, bank, weekly newspaper, recreational facilities, civic organizations, Chamber of

¹All population figures taken from the 1990 U.S. Census.

Commerce, and a full complement of businesses and other services. Petitioner further states that Wessington Springs is not located within or near an urbanized area. Moreover, petitioner contends that the reallocation would result in a preferential arrangement of allotments because it would provide a first local transmission service to Wessington Springs, without depriving Winner (population 3,354) of its sole local aural service, since Stations KWYR(AM) and KWYR-FM will remain licensed to the community.

3. We believe the proposal warrants consideration since the reallocation of Channel 252C1 to Wessington Springs would provide the community with its first local aural transmission service, without depriving Winner of its sole local aural service. Since petitioner does not seek to relocate its transmitter site, and advises that the station is unbuilt, there will be theoretical areas and populations which will lose reception service, as well as areas and populations which will receive new service. Therefore, petitioner is requested to provide information showing potential gain and loss areas if Channel 252C1 is reallocated to Wessington Springs. The study should also indicate the number of reception services which are now available within the potential gain and loss areas.

4. An engineering analysis has determined that Channel 252C1 can be allotted to Wessington Springs, South Dakota, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.² In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 252C1 at Wessington Springs, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Winner, South Dakota	229C1, 253C1	229C1
Wessington Springs, South Dakota	----	252C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

²The coordinates for Channel 252C1 at Wessington Springs are North Latitude 44-05-12 and West Longitude 98-34-24.

7. Interested parties may file comments on or before July 29, 1996, and reply comments on or before August 13, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John S. Neely, Esq.
Miller & Miller, P.C.
P.O. Box 33003
Washington, D.C. 20033
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding.

Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No.
RM-8813

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.